

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SIMON CHO (individually and his marital  
community) and CHO ENTERPRISE, INC.,  
d/b/a STAR MINI MART,

Defendants.

CASE NO. C14-0830

UNITED STATES' COMPLAINT  
FOR VIOLATIONS OF THE  
FALSE CLAIMS ACT, PAYMENT  
BY MISTAKE, UNJUST  
ENRICHMENT, AND BREACH OF  
CONTRACT

JURY DEMAND

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and David R. East, Assistant United States Attorney, for its Complaint against Defendants Simon Cho (individually and his marital community) and Cho Enterprise, Inc., d/b/a Star Mini Mart (collectively, "Defendants"), alleges as follows:

**I. PARTIES**

1.1 Plaintiff United States of America brings these claims on behalf of the United States Department of Agriculture ("USDA"), Food and Nutrition Service ("FNS"), which is responsible for administering the Supplemental Nutrition Assistance Program ("SNAP").

1.2 Defendant Simon Cho, who resides in Issaquah, Washington, is the owner and operator of Defendant Cho Enterprise, Inc., d/b/a Star Mini Mart ("Star"). Upon information

1 and belief, Mr. Cho was married at all times relevant to the conduct alleged herein and such  
 2 conduct was done for the benefit of, and resulted in a benefit to, Mr. Cho's marital  
 3 community.

4 1.3 Defendant Star is located at 1418 Hewitt Avenue, Everett, Washington 98201.  
 5 Mr. Cho owned and operated Star at all times relevant to the conduct alleged herein. Upon  
 6 information and belief, Star's revenue from the conduct alleged herein also benefitted Mr.  
 7 Cho and his marital community.

## 8 9 **II. JURISDICTION AND VENUE**

10 2.1. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1345.

11 2.2 Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), because all – or  
 12 a substantial part – of the conduct alleged herein occurred in this District.

## 13 14 **III. FACTUAL ALLEGATIONS**

### 15 **A. SNAP**

16 3.1 SNAP provides nutrition assistance to millions of eligible, low-income  
 17 individuals and families. SNAP benefits can only be used to purchase eligible food items at  
 18 authorized retailers – they cannot be withdrawn as cash or used for non-food items, such as  
 19 alcohol or cigarettes.

20 3.2 SNAP benefits are typically redeemed through the Electronic Benefit Transfer  
 21 (“EBT”) system, which, in Washington State, is administered by JP Morgan Chase. The  
 22 EBT system replaces traditional paper “food stamps” and allows SNAP participants to  
 23 purchase eligible food items using a debit-like card, which is reloaded with funds on a  
 24 monthly basis.

25 3.3 To redeem SNAP benefits, a retailer must first apply for and be accepted into  
 26 the program. The SNAP application requires retailers to certify, *inter alia*, that they “agree  
 27 to comply with all statutory and regulatory requirements associated with participation in the  
 28

Food Stamp Program” and “accept responsibility on behalf of the firm for violations of the Food Stamp Program regulations.”

**B. Star Becomes a SNAP-Authorized Retailer**

3.4 On November 21, 2008, Mr. Cho – on behalf of Star – signed a SNAP application which included the certifications referenced in Paragraph 3.3. FNS approved his application on December 16, 2008 and Star began accepting SNAP benefits shortly thereafter.

3.5 In order to process EBT transactions, Star uses an electronic point of sale (“POS”) device, which transmits detailed information to FNS regarding each EBT transaction, including the date, time and dollar amount charged on each card. Based on the data transmitted by the POS device, JP Morgan Chase reimburses Star for the amount of each EBT transaction. JP Morgan Chase is subsequently reimbursed by Washington State, which, in turn, is reimbursed by USDA.

**C. Mr. Cho and Star Defraud SNAP**

3.6 Prior to September 2011, Star’s monthly SNAP redemptions never exceeded \$5,000. However, starting in September 2011, Star’s monthly SNAP redemptions ascended rapidly, peaking at \$25,225.77 in June 2012:

<u>August 2011:</u>	\$4,526.27
<u>September 2011:</u>	\$5,372.44
<u>October 2011:</u>	\$6,213.27
<u>November 2011:</u>	\$9,660.75
<u>December 2011:</u>	\$9,128.94
<u>January 2012:</u>	\$11,028.76
<u>February 2012:</u>	\$14,528.08
<u>March 2012:</u>	\$18,236.71
<u>April 2012:</u>	\$21,530.22

1        May 2012:                \$23,819.32

2        June 2012:                \$25,225.77

3            3.7     From June 2012 through April 2013, Star's monthly SNAP redemptions  
4 ranged from a high of \$23,409.48 in July 2012 to a low of \$12,113.94 in February 2013.  
5 After Mr. Cho's arrest in April 2013, Star's SNAP redemptions dropped to \$5,208.61 in May  
6 2013 and have not since exceeded \$5,000 in a given month.

7            3.8     Through its analysis of concurrent data provided by the Washington State  
8 Department of Revenue, USDA Office of Inspector General ("USDA OIG") determined that  
9 the ratio of Star's EBT food sales to Star's sales of all EBT-eligible items (*i.e.*, EBT food  
10 sales plus non-EBT sales of eligible food items) increased from 34.6% in August 2011 to  
11 96.3% in February 2012, 100.9% in April 2012, and peaked at 101.0% in December 2012.  
12 Because it is statistically impossible for Star's EBT sales to exceed 100% of the store's total  
13 sales of EBT-eligible items (unless the store is defrauding SNAP), USDA OIG asked the  
14 Everett Police Department ("EPD") to assist with a criminal investigation of Star and Mr.  
15 Cho.

16            3.9     Between October 17, 2012 and April 18, 2013, EPD and USDA OIG  
17 conducted five undercover EBT transactions at Star. During each transaction, the customers  
18 asked Mr. Cho to give them cash as part of the EBT transaction; each time, Mr. Cho obliged,  
19 thus breaching his agreement with FNS that he would comply with SNAP's statutory and  
20 regulatory requirements.

21            3.10    For example, during one transaction, Mr. Cho charged \$41.99 on the  
22 purchaser's EBT card for a bag of cookies and soda, which, collectively, cost \$1.99. Mr.  
23 Cho split the additional \$40 with the customer, handing the customer a \$20 bill from Star's  
24 cash register.

25            3.11    The other transactions followed a similar pattern. In total, Mr. Cho processed  
26 over \$300 in illegal SNAP transactions during the five undercover purchases by EPD and  
27 USDA OIG.  
28

**D. Mr. Cho's Arrest and Conviction for Food Stamp Trafficking**

3.12 On April 18, 2013, EPD arrested Mr. Cho. The Snohomish County Prosecuting Attorney charged him with Trafficking Food Stamps (*see* RCW 9.91.142(1)), which is a "class C" felony under Washington law.

3.13 On August 20, 2013, Mr. Cho entered a guilty plea in Snohomish County Superior Court to one count of Trafficking Food Stamps. In the plea agreement, Mr. Cho admitted that he trafficked food stamps during EPD's investigation – *i.e.*, from October 17, 2012 through April 18, 2013 – in violation of RCW 9.91.142(1).

3.14 Pursuant to the terms of the plea agreement, Mr. Cho was sentenced to detention in the Snohomish County Detention Center for a term of 45 days.

**IV. FIRST CAUSE OF ACTION**  
**VIOLATIONS OF THE FALSE CLAIMS ACT**  
**(31 U.S.C. § 3729(a)(1)(A) and (a)(1)(B))**

4.1 The United States restates and incorporates by reference the allegations set forth in Paragraphs 3.1-3.14, *supra*, as if fully set forth herein.

4.2 This is a claim for treble damages and penalties under the False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.*

4.3 Through the acts described above, Mr. Cho and Star (for their own benefit and the benefit of Mr. Cho's marital community) knowingly presented, or caused to be presented, false or fraudulent claims for payment to officers, employees or agents of the United States Government, within the meaning of 31 U.S.C. § 3729(a)(1)(A).

4.4 Through the acts described above, Mr. Cho and Star (for their own benefit and the benefit of Mr. Cho's marital community) knowingly made, used, or caused to be made or used, false or fraudulent records and statements, and omitted material facts, to get false and fraudulent claims paid or approved, within the meaning of 31 U.S.C. § 3729(a)(1)(B).



1       6.3     Mr. Cho (individually and his marital community) and Star should be required  
2 to reimburse the government for all payments unjustly obtained as a result of the fraudulent  
3 conduct alleged herein.  
4

5                               **VII. FOURTH CAUSE OF ACTION**  
6                               **BREACH OF CONTRACT**

7       7.1     The United States restates and incorporates by reference the allegations set  
8 forth in Paragraphs 3.1-6.3, *supra*, as if fully set forth herein.

9       7.2     When Mr. Cho – on behalf of Star – applied to be a SNAP-eligible retailer, he  
10 entered into a contract with FNS pursuant to which he promised that he would comply with  
11 SNAP’s statutory, regulatory and/or program requirements.

12       7.3     Mr. Cho and Star, as alleged herein, breached the contract with FNS (for their  
13 own benefit and the benefit of Mr. Cho’s marital community) by engaging in fraudulent  
14 transactions pursuant to which they provided cash and ineligible goods in exchange for EBT  
15 benefits.

16       7.4     As a result of the breaches by Mr. Cho and Star, the government has sustained  
17 substantial damages in an amount to be determined at trial.

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**PRAYER FOR RELIEF**

WHEREFORE, the United States prays that the Court grant the following relief:

(a) A Judgment against Mr. Cho (individually and his marital community) and Star in an amount equal to three times the damages that the United States has sustained because of the fraudulent acts alleged herein, plus a civil penalty of \$11,000 for each violation of 31 U.S.C. § 3729;

(b) Alternatively, a Judgment against Mr. Cho (individually and his marital community) and Star for the damages resulting from the government's payment by mistake, the Defendants' unjust enrichment, and/or the Defendants' breach of contract; and

(b) That the United States be allowed costs, reasonable attorney's fees, and such other and further relief as the Court deems just and equitable.

DATED this 6<sup>TH</sup> day of June, 2014.

Respectfully submitted

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United States Attorney

*s / David R. East*

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